

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER**

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| ITA No.771/Bang/2024 |
| Assessment Year: 2010-11 |

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| Bharat Fritz Werner Ltd. No.14, HMT Factory Main Road Off Tumkur Road Bangalore 560 022 PAN NO : AAACB5723A | Vs. | DCIT Circle-1(1)(1) Bangalore |
| APPELLANT | | RESPONDENT |

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| Appellant by | : | Sri Sandeep Chalapathy, A.R. |
| Respondent by | : | Smt. Neha Sahay, D.R. |

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| Date of Hearing | : | 20.06.2024 |
| Date of Pronouncement | : | 24.06.2024 |

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2010-11 dated 28.2.2024 passed u/s 250 r.w.s. 254 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.*
- 2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not adjudicating the ground regarding short term capital loss of Rs. 67,58, 168/- from sale of Capital Work-in-progress.*
- 3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the said additional ground cannot be admitted even though the same has been remanded by the Hon'ble Tribunal for adjudication on merits.*

4. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the ground regarding ascertaining the Short Term Capital loss on sale of Capital Work-in-progress on the ground that is not pure point of law but requires verification of facts.*
 5. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant has not provided any good reason for omission of raising the above additional ground therefore, the same cannot be admitted and such finding is contrary to the materials available on record.*
 6. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the above claim of the appellant is a fresh claim which cannot be adjudicated by the learned Commissioner of Income Tax (Appeals).*
 7. *That the learn Commissioner of Income Tax (Appeals) erred in law and on facts in not deciding the case on merits after seeking all the necessary information and documents which are required for adjudication of the same.*
- 2.** Originally, assessee came in appeal before this Tribunal in ITA No.2046 to 2049/Bang/2019 for the assessment years 2010-11 to 2014-15 and the Tribunal vide order dated 30.9.2021 has remitted the issue in dispute to the file of ld. AO as follows:
- “11. The last issue urged in this year relates to non-adjudication of grounds relating to Capital gains by ld. CIT(A). Since the ld. CIT(A) has not adjudicated this issue, we restore this ground to the file of ld. CIT(A) for adjudicating the same after affording adequate opportunity to the assessee.”*
- 3.** During the set aside proceedings, the NFAC observed that the assessee claimed that the loss of amount of Rs. 1,36,43,976/- was added back in the computation of income to arrive at the income under the head "Profits and gains of business of profession", however, the entire loss of Rs. 1,36,43,976/- was never claimed as deduction in the return of income. Hence, as per the loss of Rs. 67,58,168/- should be allowed as 'Short-term capital loss for the Assessment year 2010-11 and allowed to be carried forward to future years. On going through the submissions of the assessee, the NFAC observed that the working of loss of Rs. 67,58,168/- on sale of WIP requires further verification of facts on this issue as these facts

including invoices were not available on record before the AO during the assessment proceedings. Thus, NFAC observed that the above additional ground is not a pure point of law and requires verification of facts. The Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd, Vs. CIT [1998] 229 1TR 383 held that it is open for the appellate authorities to admit a fresh plea, which has not hitherto raised before the lower authorities provided, of course, the necessary facts to decide the plea are on record. Moreover, the assessee has to Satisfy the appellant authority about existence of good reason for omission of such ground in original appeal memo and on failure of assessee to give any reason, additional ground could not be entertained. In this case, the assessee has not given any reason for omission of the above ground in original appeal memo, hence on this ground also, the additional ground could not be entertained by the NFAC. In view of the above facts and discussion, the NFAC observed that the additional ground raised by the assessee before the CIT(A), being not a pure point of law, was not admitted.

3.1 Further, NFAC observed that the assessee has not claimed the aforesaid loss as short-term capital loss in the return of income filed for the AY 2010-11. The CIT(A) has no authority or power to admit a claim or any other relief under this Act after the expiry of the period specified by or under this Act as per Section 119(2)(b) of the Act. The powers to admit any new claim or relief is vested with the Board as per provisions of section 119(2) and every order issued under this clause shall be laid before each House of Parliament. Therefore, it is beyond the jurisdiction of the appellate authority to admit any new claim or relief as sought by the appellant. The circular of the board no. 14 dated 11.04.1995, relied upon by the assessee, antedates 1961 Act and is in context of 1922 Act which did not have 119(2)(b) introduced by Taxation Laws (Amendment) Act, 1970. If statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. As the additional

ground raised by the assessee before the CIT(A) is not admitted, the said ground is not adjudicated by the NFAC on merit separately. Against these findings of the NFAC, assessee is once again in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. The Tribunal on earlier occasion vide order in ITA No.2046 to 2049/Bang/2019 dated 30.9.2021 given categorical finding on this issue that since the Id. CIT(A) has not adjudicated this issue, the ground was restored to the file of Id. CIT(A) for adjudicating the same after offering an adequate opportunity to the assessee. However, the Id. CIT(A) has not admitted the said additional ground and dismissed it. In our opinion, NFAC being the subordinate authority under the Income Tax Act and it is bound to follow the direction of the Tribunal given in its earlier order cited (supra) in true perspective which he failed to do so. Hence, once again we make it clear that this ground has already been admitted by the ITAT as seen from para 11 of earlier order of the Tribunal cited (supra). Accordingly, once again, we direct the NFAC to decide the issue only on merit and not on admission of that ground.

4.1 Further, we also make it clear that the Hon'ble Supreme Court in the case of Goetze India Ltd. vs. CIT (2006) (284 ITR 323), wherein held that *"The decision was restricted to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return, and did not impinge on the power of the Appellate Tribunal under section 254 of the Income-tax Act, 1961. Decision of the Delhi High Court affirmed."*

4.2 Accordingly, the issue in dispute is remitted to the file of NFAC to decide the issue on merit only. Ordered accordingly.

5. In the result, appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 24th June, 2024

Sd/-
(Prakash Chand Yadav)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 24th June, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.